

**REMARKS**

**INTRODUCTION:**

In accordance with the foregoing, claims 15, 16, and 32 have been amended. No new matter is being presented, and approval and entry of the foregoing amendments are respectfully requested.

Claims 1-43 are pending and under consideration. Reconsideration is requested.

**NON-STATUTORY DOUBLE PATENTING REJECTION:**

On pages 2-22 of the Office Action, the Examiner rejects claims 1-14, 17-28, 30, 31, 36-39, and 41 under the judicially created doctrine of obviousness-type double patenting in view of selected claims of U.S. Patent No. 6,449,227 in view of Kawamura et al. (U.S. Patent No. 6,075,920) as set forth in the Office Action. Since claims 15, 16, and 32 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature. MPEP 804(I)(B). As such, it is respectfully requested that the applicant be allowed to address any obviousness-type double patenting issues remaining once the rejections of claims 15, 16, and 32 under 35 U.S.C. §§102 and 103 are resolved and that the rejection be reconsidered in light of the claims presented above.

Moreover, the Examiner asserts that Kawamura et al. teaches an audio encoder 6 and video encoder 5 which encode audio and video data as effective DVD-audio data. By way of review, while Kawamura et al. discloses a video encoder 5 encoding video data for use in a portion of storage medium 19 designated as storing digital video disc (DVD) video, there is no suggestion that the audio encoder 6 encodes data using a DVD audio format instead of or in addition to the ATRAC, MPEG1 Audio, MPEG2 Audio, or MD audio standards as set forth in col. 9, lines 1-8, or that the audio encoder 6 is capable of performing such an operation. As such, it is respectfully submitted that there is insufficient evidence of record that combination of the claims of U.S. Patent No. 6,449,227 and Kawamura et al. disclose or suggest the features of the claims 1-14, 17-28, 30, 31, 36-39, and 41 of the instant application.

**REJECTION UNDER 35 U.S.C. §102:**

In the Office Action at page 22, the Examiner rejects claim 15 under 35 U.S.C. §102(e) in view of Kawamura et al. This rejection is respectfully traversed and reconsideration is requested.

By way of review, claim 15 recites, among other features, "[a]n apparatus to record audio

data and control information of said audio data on a digital versatile disc (DVD) comprising a video directory and an audio directory other than the video directory, the apparatus comprising "an optical pickup to record the audio data and the control information in the audio directory of the DVD." In contrast, Kawamura et al. teaches recording video data on a portion of a storage medium 19 in accordance with Digital Video Disc (DVD) standards and encoding audio data using ATRAC, MPEG1 Audio, MPEG2 Audio, or MD audio standards as set forth in col. 9, lines 1-8. However, there is no suggestion that the data is organized using video and audio directories, or that the audio data is recoded in the audio directory instead of or in addition to the video directory. As such, it is respectfully submitted that Kawamura et al. does not disclose or suggest the invention recited in claim 15.

**REJECTION UNDER 35 U.S.C. §103:**

In the Office Action at pages 23-24, the Examiner rejects claims 16 and 32 under 35 U.S.C. §103 in view of Kawamura et al. and Akune et al. (U.S. Patent No. 5,856,796). The rejection is respectfully traversed and reconsideration is requested.

Among other features, the Examiner asserts that, while Kawamura et al. fails to disclose a sampling frequency of one of 176.4 KHz and 192 KHz, Akune et al. teaches using a sampling frequency of 192 KHz for use with super-digital audio data. Even assuming arguendo that the Examiner is correct and that the combination is proper, it is respectfully submitted that Akune et al. does not suggest that the sampling frequency can be 176.4 KHz instead of 192 KHz, or that the encoder is able to record at both the 176.4 KHz and 192 KHz sampling frequencies. Since Kawamura et al. is not relied upon as disclosing such a feature, it is respectfully submitted that the combination does not disclose or suggest, among other features, that "said encoding unit samples said audio data at a sampling frequency selectable between 176.4KHz and 192KHz and is able to record the audio data on the DVD at the sampling frequency of 176.4KHz and the sampling frequency of 192KHz" as recited in claim 16.

Additionally, for at least reasons similar to why Kawamura et al. does not disclose the invention recited in claim 15 as set forth above, it is respectfully submitted that Kawamura et al. does not disclose or suggest, among other features, "recording the data and the information on the data in an audio directory of a digital versatile disc (DVD) other than a video directory of the DVD" as recited in claim 32. Since Akune et al. is not relied upon as curing this deficiency, it is respectfully submitted that the combination does not disclose or suggest the invention recited in claim 32.

**STATUS OF CLAIMS NOT REJECTED:**

On page 24 of the Office Action, the Examiner allows claims 29 and 33-35, and, on page 27 of the Office Action, objects to claims 40-43 on page 27 of the Office Action for depending from rejected claims.

**CONCLUSION:**

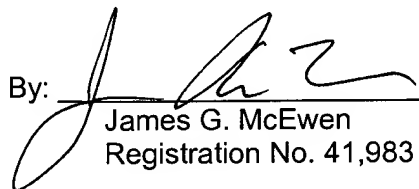
In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, it is respectfully submitted that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any additional fees associated with the filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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